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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE DAUGHERITY,

Defendant and Appellant.

F063016

(Super. Ct. No. F11902156)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Fresno County. Edward Sarkisian, Jr., Judge.

R. Shanti Brien, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Ivan P. Marrs, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J. and Franson, J.

Javier Pablo parked and locked his car outside his apartment one evening. His car was not there the next morning. Later that day, he saw his car go by with a “white man” wearing a “jersey” at the wheel. A few hours later, he saw Daugherity drive his car into a nearby apartment building, get out of the driver’s side, and get back into the driver’s side minutes later. He called out to her and waved his car key at her. The police arrived, searched his car, and found a “shaved” key in the ignition.<sup>1</sup> After the court denied Daugherity’s motion for judgment of acquittal, a jury found her guilty of unlawful driving or taking of a vehicle. On appeal, she challenges the court’s denial of her motion. We affirm.

### **BACKGROUND**

On May 2, 2011, an information charged Daugherity with, inter alia, unlawful driving or taking of a vehicle (count 1; Veh. Code, § 10851, subd. (a) (10851(a)),<sup>2</sup> receiving stolen property (count 2; Pen. Code, § 496, subd. (d)), and possession of burglar’s tools (count 3; Pen. Code, § 466). The information further alleged Daugherity had suffered two prior section 10851(a) convictions and a prior conviction of possession of a weapon by a prison inmate (Pen. Code, § 4502) within the meaning of Penal Code section 667.5, subdivision (b).

Daugherity admitted all three prior convictions and moved for acquittal on the ground that the evidence was insufficient to sustain the charges. (Pen. Code, § 1118.1.) After the court denied her motion, the jury found her guilty of count 1 and not guilty of counts 2 and 3. On August 2, 2011, the court sentenced her to four years on count 1 plus one year for each prior prison term for a total of seven years in prison. (Pen. Code, § 667.5, subd. (b).)

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<sup>1</sup> The discussion sets out additional facts, as relevant (*post*).

<sup>2</sup> All further statutory references are to the Vehicle Code unless otherwise specified.

## DISCUSSION

Daughterity argues that the conviction for vehicle theft violates her fourteenth amendment right to due process because a “shaved” key is not so dissimilar to a normal key to create substantial evidence that she knew the car was stolen or that she had the intent to deprive the owner of possession. The Attorney General argues that sufficient evidence supports Daughterity’s conviction because the “shaved” key is circumstantial evidence of her commission of the crime. We agree. (See, e.g., *People v. Green* (1995) 34 Cal.App.4th 165, 181 (*Green*).)

The basis of Daughterity’s insufficient evidence claim is that a “shaved” key does not provide enough evidence to show her specific intent to deprive Pablo of his car. Pablo testified that he parked and locked his car outside his apartment and the next morning his car was gone. Later that afternoon, he saw a “white man” wearing a “jersey” driving his car but lost it in traffic. He testified that, while on a walk a few hours later, he saw Daughterity driving his car into the parking lot of an apartment complex. She parked his car and went into an apartment. He stayed with his car and waited for the police to arrive.

Minutes later, Daughterity got back into Pablo’s car and began to drive off. He testified that he yelled that it was his car and waved his key. She stopped his car but stayed in the driver’s seat.

Once the police arrived, an officer searched Pablo’s car. The officer testified that when he pulled the key out of the ignition the key appeared to have been “shaved” and “tampered with.” A “shaved” key, the officer testified, is often used in car thefts, most commonly with cars of the same type as Pablo’s.

“To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable

doubt.’” (*People v. Jurado* (2006) 38 Cal.4th 72, 118, citing *People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatsoever there is sufficient substantial evidence to support [the conviction].’” (*People v. Bolin* (1998) 18 Cal.4th 297, 331, citing *People v. Redmond* (1969) 71 Cal.2d 745, 755.)

To establish guilt under section 10851(a), the prosecution is required to prove that the defendant drove or took a vehicle belonging to another person, without the owner’s consent, and that the defendant had the specific intent to permanently or temporarily deprive the owner of title or possession. (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1574 (*O’Dell*), citing *Green, supra*, 34 Cal.App.4th at p. 180.) As our Supreme Court emphasizes, the slight corroboration that permits an inference that the possessor knew the property at issue was stolen may consist of no explanation, an unsatisfactory explanation, or other suspicious circumstances that would justify the inference. (*O’Dell, supra*, at p. 1575, citing *People v. McFarland* (1962) 58 Cal.2d 748, 754.) Daugherity’s use of a recently stolen car by way of a common car theft tool was more than the slight corroboration necessary to permit the inference that she knew the car was stolen and that she had the intent to deprive Pablo of possession. The court properly denied her motion for acquittal.

## **DISPOSITION**

The judgment is affirmed.